

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

B. Stone
Proc I
14478

[Protest Against Library of Congress RFP]

FILE: B-198275

DATE: August 5, 1980

MATTER OF: Vydec, Inc.

DIGEST:

1. Requirement in solicitation or changes made to accommodate one offeror are not objectionable, since specifications must be drawn to maximize competition and GAO does not ordinarily question agency's determination that less restrictive specification will meet Government's needs.
2. Protester has burden of affirmatively proving case and GAO will not conduct investigation to establish whether protester's speculative statement that only one firm will be able to comply with solicitation is valid.
3. Contracting agency is not precluded from initiating changes in solicitation specifications on its own nor is it required to identify in solicitation amendment questions that prompted changes when questions were raised by prospective offerors.
4. There is no need to neutralize competitive advantages which arise due to vendor's incumbency or particular circumstances.
5. Unfair motives on basis of inference or supposition will not be attributed to evaluation committee member who had private discussions with one offeror before offers were submitted which admittedly were not improper.

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6. In view of contracting agency's denial of protester's allegation that contracting agency has advance commitment to make award under solicitation to specific company, protester has not met burden of proving allegation.
7. Protest that contracting agency will not follow mandatory requirements of specifications in selection of contractor is premature until selection is made, since GAO will not anticipate failure by contracting agency to comply with procurement requirements.

Vydec, Inc. (Vydec), protests against Library of Congress (Library) request for proposals (RFP) No. 79-22, as amended, for the leasing of word processing equipment and software.

Essentially, it is Vydec's contention that the RFP, as amended, has been drafted so that only the Lexitron Corporation (Lexitron), the incumbent contractor, will be successful and that no other firm will be able to meet the requirements of the solicitation. Vydec depends on several bases to support its contention that the solicitation is in effect a sole source for Lexitron. First, it states that the solicitation permits nonidentical media compatibility which will only benefit Lexitron. Second, the Library has requested offerors to submit prices for converting 200,000 pages of Lexitron cassette material to the successful offeror's storage media, but only Lexitron knows the number of lines and characters on the pages. Third, changes have been made in the specifications without any indication that they were invited by prospective offerors and the issuance of questions that prompted the changes. Fourth, the changes made relaxed the specifications for Lexitron. Fifth, a member of the Library's evaluation committee had private discussions with Lexitron while the procurement has been pending. Sixth, Vydec has heard that the Library has a commitment with Lexitron to purchase its equipment.

We do not consider the protest to have merit.

Any requirements in the solicitation or changes made to accommodate Lexitron are not objectionable, so long as they are based upon the Government's needs, since specifications must be drawn to maximize competition. Harris Data Communications, Inc., B-192384, January 8, 1979, 79-1 CPD 7. Also, our Office ordinarily does not question an agency's determination that a less restrictive solicitation will meet the Government's needs. Lion Recording Services, Inc., B-194724, May 14, 1979, 79-1 CPD 352. While Vydec contends that no one other than Lexitron will be able to meet the specifications, the Library has indicated that 12 offerors have responded to the solicitation. We agree that is not conclusive as to whether those offerors meet the specifications. However, Vydec has furnished no information to support its allegation that no firm other than Lexitron will be able to comply. In that regard, the protester has the burden of affirmatively proving its case and our Office will not conduct an investigation to establish whether a protester's speculative statements are valid. Alan Scott Industries, B-197036, March 21, 1980, 80-1 CPD 212.

Moreover, we are aware of no requirement that precludes the Library from initiating changes in the specifications in the solicitation on its own or makes it necessary to identify in the amendment the questions that prompted changes when the questions were raised by prospective offerors.

Further, if Lexitron has any advantage by being the only one that knows the number of lines and characters on the 200,000 pages that have to be converted, that is not legally objectionable. Our Office has held that there is no need to neutralize competitive advantages which arise due to a vendor's incumbency or particular circumstances. Ronald Campbell Company, B-196018, March 25, 1980, 80-1 CPD 216; ENSEC Service Corp., 55 Comp. Gen. 656 (1976), 76-1 CPD 34.

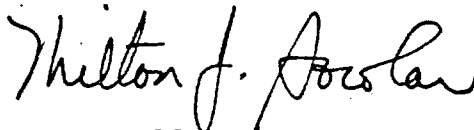
As to the private discussions that the member of the Library evaluation committee allegedly had with Lexitron representatives before offers were submitted, Vydec indicates that it did not mean to

imply that the discussions involved any improprieties. To the extent that it may be suggesting that the relationship is indicative of a preference for Lexitron, it is devoid of any factual substantiation. Our Office has held that unfair motives will not be attributed to individuals on the basis of inference or supposition. University of New Orleans, B-184194, May 26, 1978, 78-1 CPD 401.

Additionally, the Library has denied Vydec's allegation that the Library has a commitment to lease Lexitron equipment. The Library has indicated that the result of the competition under solicitation No. 79-22 will determine whose equipment will be leased. As indicated above, Vydec has the burden of proving its allegations. In view of the conflicting statements from Vydec and the Library, Vydec has not met that burden.

Vydec also contends that the Library will not follow the mandatory requirements of the specifications in the selection of the contractor. Whether that is correct remains to be demonstrated by the offer selected for award. Until such time as the selection is made, this aspect is considered to be premature. Our Office will not anticipate failure by a contracting agency to comply with procurement requirements. Aero Corporation, B-194445.2, October 17, 1979, 79-2 CPD 262. Therefore, this aspect of the protest will not be considered at this time.

The protest is denied in part and dismissed in part.



For The Comptroller General
of the United States